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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,338	10/12/2000	Oliver Opitz	FA/201	2659

7590 10/25/2002

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EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/600,338

Applicant(s)

OPITZ, OLIVER

Examiner

Jennifer A Boyd

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \*   c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Applicant's Amendments to claims 1 and 27 and Accompanying Remarks, filed July 13, 2002, has been entered as Paper No. 7 and has been carefully considered. The Examiner withdraws the 35 U.S.C. 103 rejections of claims 8 – 9 as set forth in paragraph 6 of Paper No. 6. However, during an updated search, additional prior art was discovered that appears to render the instant invention as currently claimed unpatentable.

### ***Specification***

2. The disclosure is objected to because of the following informalities: spelling. The word "Title" is misspelled on line 1, page 1. The word "Prior" is misspelled on line 9, page 1. The words "laminate" and "plastic" are misspelled on line 27, page 3. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. Claims 4, 7 and 8 are in improper Markush group form. One proper form of Markush groups is as follows: “selected from the group consisting of A, B and C”. Please amend accordingly.

***Claim Rejections - 35 USC § 102/103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1 – 4, 6 – 12, 15 – 24, 25 – 28 and 35 – 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Driskill et al. (US 4,925,732). A discussion of said rejection can be found in paragraph 2 of Paper No. 6.

8. Furthermore, it is implied that the inner surface of the leather layer is the flesh side of the leather as required by claim 2. Driskill et al. states that the laminate can be used for a shoe (column 6, lines 55 – 60). If used for a shoe, the flesh side would be adhered to the functional layer and the outer surface would be the visible part of the shoe. As required by claims 10 and 11, the leather layer would have to be a natural leather layer or a synthetic leather layer (thus a leather substitute). As required by claim 21, the functional layer or the adherend can be a membrane or film (column 6, lines 61 – 68). As required by claim 19, the laminate can contain more than two adherends (column 5, lines 25 – 31).

9. Claims 1 and 27 have been amended to add “the laminate having a water vapor transmission resistance (Ret) of less than  $600 \times 10^{-3}$  (m<sup>2</sup>mbar)/W and a crumple flex durability of at least 50,000 cycles”. Although Driskill et al. does not explicitly teach the claimed a water vapor transmission resistance (Ret) of less than  $600 \times 10^{-3}$  (m<sup>2</sup>mbar)/W and a crumple flex

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durability of at least 50,000 cycles”, it is reasonable to presume that a water vapor transmission resistance (Ret) of less than  $600 \times 10^{-3}$  (m<sup>2</sup>mbar)/W and a crumple flex durability of at least 50,000 cycles” is inherent to Driskill et al. Support for said presumption is found in the use of like materials ([i.e. same laminate structure with leather and ePTFE) which would result in the claimed property. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of a water vapor transmission resistance (Ret) of less than  $600 \times 10^{-3}$  (m<sup>2</sup>mbar)/W and a crumple flex durability of at least 50,000 cycles” would obviously have been present once the Driskill et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to providing of this rejection made above under 35 USC 102. One would have been motivated to have a laminate structure with the claimed water vapor transmission resistance and crumple flex durability in order to have a permanently water resistant material.

### ***Claim Rejections - 35 USC § 103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
11. Claims 13 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Driskill (US 4,925,732). A discussion of said rejection can be found in paragraph 4 of Paper No. 6.
12. Claims 5 and 29 – 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Driskill et al. (US 4,925,732) as applied to claims 1 – 4, 6 – 7, 10 – 12, 15 – 24, 25 – 28 and 35 – 37 above, and further in view of McConnell et al. (US 4,299,933). A discussion of said rejection can be found in paragraph 5 of Paper No. 6.

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13. Claims 8 – 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Driskill et al. (US 4,925,732) as applied to claim 1 above, and further in view of Peter (EP 210,656).

Driskill et al. does not disclose the use of a hydrophobicizer.

Peter discloses a hydrophobitizing impregnating spray providing for leather containing a fluorocarbon resin (Abstract).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the laminate of Driskill et al. and provide it with a water repellent coating that includes fluorocarbon of Peter with the motivation of having a porous material that will repel water while allowing the material to breathe.

#### ***Response to Arguments***

14. Applicant's arguments filed July 13, 2002, as Paper No. 7, have been carefully considered but they are not persuasive.

15. In response to the Applicant's argument that Driskill et al. fails to disclose every element of claims 1 – 4, 6, 7, 10 – 12, 15 – 28 and 35 – 37, the Examiner respectfully argues the contrary. Driskill et al. does disclose all the limitations either directly or indirectly. Driskill et al. discloses a laminate containing comprises at least two flexible moisture permeable adherends and a moisture permeable adhesive (Abstract). One embodiment of their invention is a ePTFE and leather laminate (column 4, lines 67 – 68).

16. In response to the Applicant's argument that Driskill et al. fails to disclose every elements of claims 13 and 14, the Examiner respectfully argues the contrary. Driskill et al.

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discloses that the leather used is of a thickness between 0.8mm and 2mm or between 1mm and 1.5mm.

17. In response to the Applicant's argument that Driskill et al. in view of McConnell et al. fails to disclose every element of claims 5 and 29 – 34, the Examiner respectfully argues the contrary. Driskill et al. does disclose all the limitations either directly or indirectly. Driskill et al. discloses a linear thermoplastic copolyester which can be used as an adhesive which can be extrusion coated or applied from solution (column 2, lines 1 – 8). Example 3 teaches the use of powder and dot application of the adhesive (column 5, lines 31 – 41).

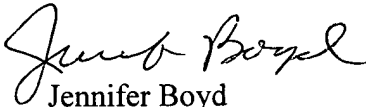
18. In response to the Applicant's argument that Driskill et al. in view of Kenigsberg et al. (US 5,156,780) fails to disclose or suggest the use of fluorocarbons as a hydrophobitizing agent as required by claims 8 - 9, the Examiner agrees. The new rejection of claims 8 – 9 under 35 U.S.C. 103(a) as being unpatentable over Driskill et al. (US 4,925,732) as applied to claim 1 above, and further in view of Peter (EP 210,656) can be found in paragraph 11 in this action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 703-305-7082. The examiner can normally be reached on Monday thru Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Jennifer Boyd  
October 21, 2002

